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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 August 1996, at 10 a.m.

Chairman: Mr. EIDE

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GE.96-13971 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION (agenda item 21)

1. The CHAIRMAN announced the proposed make-up of the four pre-sessional working groups:

Working Group on Communications

Africa:	Mr. Yimer
	Ms. Mbonu (Alternate)
Asia:	Mr. Fan Guoxiang
	Mr. Zhong Shukong (Alternate)
Latin America:	Mr. Diaz Uribe
	Mr. Fix Zamudio (Alternate)
Western Europe:	Ms. Palley
	Mr. Bossuyt (Alternate)
Eastern Europe:	Mr. Ramishvili

Working Group on Indigenous Populations

Africa:	Mr. Guissé
Asia:	Mr. Hatano
	Mr. Yokota (Alternate)
Latin America:	Mr. Alfonso Martínez
	Mr. Bengoa (Alternate)
Western Europe:	Ms. Daes
	Mr. Weissbrodt (Alternate)
Eastern Europe:	Mr. Boutkevitch

Working Group on Minorities

Africa:	Mr. Khalil
	Mr. Mehedi (Alternate)
Asia:	Mr. Ali Khan
	Mr. El-Hajjé (Alternate)
Latin America:	Mr. Bengoa
	Mr. Alfonso Martínez (Alternate)
Western Europe:	Mr. Eide
Eastern Europe:	Mr. Chernichenko

Working Group on Contemporary Forms of Slavery

Africa:	Ms. Warzazi Ms. Gwanmesia (Alternate)
Asia:	Mr. El-Hajjé Mr. Ali Khan (Alternate)
Latin America:	Mr. Lindgren Alves Ms. Ferriol Echevarria (Alternate)
Western Europe:	Mr. Bossuyt Ms. McDougall (Alternate)
Eastern Europe:	Mr. Maxim

2. The CHAIRMAN said he took it that the Sub-Commission approved those proposals.

3. It was so decided.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS RELATING TO AGENDA ITEMS 13, 17, 15, 3 AND 4 (continued)

Draft resolution E/CN.4/Sub.2/1996/L.18 (International peace and security as an essential condition for the enjoyment of human rights, above all the right to life) (continued)

4. Ms. PALLEY said that after consulting the other sponsors of the draft resolution under consideration, with the exception of Mr. Yimer, she had succeeded in drafting a compromise text for the penultimate preambular paragraph. The phrase following the word "with" would be deleted and replaced by: "principles of international human rights and humanitarian law".

5. Ms. GWANMESIA proposed, to avoid repetition with the first preambular paragraph, to amend the penultimate preambular paragraph to read: "Convinced that the production, sale and use of such weapons are incompatible with the promotion and protection of international peace and security", the ultimate objective being to promote peace and security in the world.

6. Ms. PALLEY pointed out that the first preambular paragraph was a general statement, whereas in the penultimate preambular paragraph, the Sub-Commission formulated an opinion, which should appear in the draft. She suggested that the text proposed by Ms. Gwanmesia should constitute a new paragraph, to be placed at the end of the preamble.

7. Mr. YIMER noted that, under United Nations terminology, one spoke of promoting and keeping, not protecting, international peace and security.

8. Ms. GWANMESIA endorsed Ms. Palley's suggestion and Mr. Yimer's amendment.

9. Mr. ALFONSO MARTINEZ, taking up Ms. Palley's first proposal, said that it would be preferable to speak of "principles of international humanitarian law and principles of the international law of human rights" rather than "principles of international human rights and humanitarian law".

10. Mr. MEHEDI said that in order to make it clear that human rights must be respected both in time of peace and in time of war, he proposed the following wording: "the principles of international human rights law".

11. Mr. BOSSUYT expressed a preference for the text proposed by Mr. Alfonso Martínez, because it referred both to the principles of international human rights law and to the principles of international humanitarian law. However, he was not so sure that the Sub-Commission was competent to address those questions.

12. Mr. CHERNICHENKO called for a vote on the draft resolution, regardless of its form. For his part, he would abstain, because he could not support a text concerning questions which did not fall within the Sub-Commission's mandate.

13. Ms. PALLEY, after consulting Mr. Mehedi, suggested the following text: "are incompatible with the principles of international human rights, international human rights law and international humanitarian law".

14. Mr. ALFONSO MARTINEZ and Mr. YIMER said that they did not understand what was meant by "principles of international human rights".

15. Mr. MEHEDI proposed simply to say: "the production, sale and use of such weapons are incompatible with international human rights law".

16. Mr. WEISSBRODT said that consultations had been held very briefly that morning on the draft resolution under consideration and that unfortunately the views of the sponsors had not all been taken into account. For his part, he had a number of amendments to propose.

17. The CHAIRMAN suggested that the sponsors of the draft resolution should hold further consultations.

18. Ms. PALLEY said that it had been very difficult to hold serious consultations in the past few days. After many difficulties, she had succeeded in reaching an agreement on the draft resolution earlier that morning. Unfortunately, one of the new sponsors had then decided to propose another amendment to the draft. Certain sponsors, and one in particular, wanted to water down the draft resolution, fearing that it might be used against a super-Power which employed the weapons in question. She formally requested that debate on the draft resolution should be closed.

19. Mr. ALFONSO MARTINEZ said that if the debate were closed, Mr. Weissbrodt would not even be able to submit his amendments orally.

20. Mr. WEISSBRODT said that, in a desire to compromise, he had agreed before the beginning of the meeting to using the phrase "principles of international human rights law and of international humanitarian law" and to

withdrawing his amendments. The word "principles", although not entirely acceptable in his opinion, nevertheless toned down considerably the wording proposed earlier. To assert that the production, sale and use of such weapons were incompatible with international human rights law and international humanitarian law was to make an untrue statement, from the point of view of both the facts and the law.

21. The CHAIRMAN asked Mr. Weissbrodt to speak only on the motion to close the debate.

22. Mr. WEISSBRODT pointed out that an agreement had been negotiated and that that agreement had been broken. Now he was being deprived of the right to take the floor or propose amendments. That was not fair.

23. Mr. ALFONSO MARTINEZ said he was also opposed to closing the debate. There was no reason to bar Mr. Weissbrodt from presenting his amendments orally.

24. The CHAIRMAN, while conceding that that was not how the motion to close debate was supposed to be used, said that the procedure had to be respected. He put the motion to a vote.

25. The motion to close the debate was carried by 13 votes to 6, with 3 abstentions.

26. The CHAIRMAN invited the members of the Sub-Commission to vote on draft resolution E/CN.4/Sub.2/1996/L.18, as orally amended, i.e. with the new paragraph proposed by Ms. Gwanmesia and the amendment to replace the end of the sixth preambular paragraph by "with international human rights law and international humanitarian law".

27. Draft resolution E/CN.4/Sub.2/1996/L.18, as orally amended, was adopted by 15 votes to 1, with 8 abstentions.

28. Mr. WEISSBRODT said that he would not have stood in the way of consensus if the draft resolution had merely mentioned nuclear, chemical and biological weapons, the only ones recognized by the international community as being weapons of mass, indiscriminate destruction. Unfortunately, other weapons had been added, which were not of the same nature as the above-mentioned ones and which were not incompatible with international law, human rights law or international humanitarian law. Such a confusion was unacceptable and demonstrated the Sub-Commission's lack of expertise in the area.

29. Mr. LINDGREN ALVES, speaking in explanation of vote after the vote, said that he had abstained not because he did not share the concerns of the draft resolution's sponsors but because, in his view, the draft resolution would be totally ineffective. It was difficult to imagine, for example, that Governments contemplating the use of weapons of mass destruction would willingly agree to provide the Secretary-General with information on such weapons.

30. Mr. ALFONSO MARTINEZ, speaking in explanation of vote, said that he had abstained because he did not know enough about the question of weapons, which should be discussed from a technical point of view in bodies that were competent on the subject.

31. Ms. GWANMESIA said that she did not share Mr. Lindgren Alves' pessimism and sincerely hoped that States would abide by the principles set forth in the resolution.

32. Mr. GUISSÉ said he did not contest the relevance of the legal and technical arguments raised by the previous speakers. However, the weapons referred to in the resolution claimed hundreds of thousands of victims, in particular in the countries of the third world, and the Sub-Commission was duty-bound to help put an end to that tragedy.

Draft resolutions relating to agenda item 17 (continued)

Draft resolution E/CN.4/Sub.2/1996/L.25/Rev.1 (Prevention of discrimination and protection of minorities)

33. Ms. DAES said that all the amendments proposed by the experts concerned had been included in the revised version of draft resolution L.25, and she therefore proposed that it should be adopted without a vote.

34. The CHAIRMAN informed the Sub-Commission that Mr. Joinet, Mr. Guissé, Mr. Maxim and Ms. Gwanmesia had joined the draft resolution's sponsors and that Mr. Weissbrodt had replaced Ms. McDougall as a sponsor.

35. Draft Resolution E/CN.4/Sub.2/1996/L.25/Rev.1 was adopted without a vote.

Draft resolutions relating to agenda item 15 (continued)

Draft resolution E/CN.4/Sub.2/1996/L.53 (United Nations Voluntary Trust Fund on Contemporary Forms of Slavery)

36. The CHAIRMAN informed the Sub-Commission that Ms. Daes, Mr. Diaz Uribe, Mr. El-Hajjé, Mr. Joinet, Mr. Maxim and Mr. Mehedi had joined the draft resolution's sponsors.

37. Draft resolution E/CN.4/Sub.2/1996/L.53 was adopted without a vote.

Draft resolutions and decisions relating to agenda item 3 (continued)

Draft decision E/CN.4/Sub.2/1996/L.30 (Methods of work of the Sub-Commission)

38. The CHAIRMAN informed the Sub-Commission that Mr. Alfonso Martínez, Mr. Diaz Uribe, Mr. Joinet, Mr. Maxim, Mr. Mehedi, Ms. Mbonu and Ms. Gwanmesia had joined the draft decision's sponsors.

39. Draft decision E/CN.4/Sub.2/1996/L.30 was adopted without a vote.

Draft decision E/CN.4/Sub.2/1996/L.37 (Reform of the work of the Sub-Commission)

40. Mr. LINDGREN ALVES, sponsor of the draft decision, proposed the insertion of the following words at the end: "and of those cases in which the studies or reports are specificially recommended by a competent working group of the Sub-Commission".

41. Mr. ALFONSO MARTINEZ, supported by Ms. MBONU, endorsed the draft decision. Next year, he hoped to cooperate with other experts on drawing up a working document listing possible subjects for a report or study. The Sub-Commission might thus choose in advance which of those topics should be given priority.

42. Mr. JOINET supported the draft decision and also the proposal by Mr. Alfonso Martínez on drawing up a list of subjects for possible studies.

43. Ms. PALLEY opposed the draft decision. Having conducted too many studies, the Sub-Commission would go to the opposite extreme by deciding not to recommend any new study to the Commission on Human Rights. Conducting studies was the main task of an expert, and by restricting their number, the Sub-Commission might well furnish additional arguments to those who wanted to abolish that body. However, she did not deny the need to set priorities with regard to such studies.

44. Mr. LINDGREN ALVES said that that restriction did not apply to the current session. He, too, was convinced of the overriding importance of studies, but hoped to restrict their number so that the experts had time to consider them in depth.

45. Mr. EL-HAJJÉ said that the Sub-Commission was not empowered to restrict, on its own initiative, the number of studies that it conducted. In his view, such a decision fell within the competence of the Commission on Human Rights. Consequently, it was not for the Sub-Commission to state its position on the draft decision.

46. Mr. ALFONSO MARTINEZ suggested that, in conformity with rule 54 of its rules of procedure, the Sub-Commission should vote on whether it was competent to adopt the draft decision before it.

47. By 21 votes to 1, the Sub-Commission declared itself competent to express its position on draft decision E/CN.4/Sub.2/1996/L.37.

48. Mr. JOINET and Mr. GUISSÉ asked for the draft decision to be put to a vote.

49. Draft decision E/CN.4/Sub.2/1996/L.37 was adopted by 18 votes to 3, with 2 abstentions.

Draft decision E/CN.4/Sub.2/1996/L.41 (Methods of work of the Sub-Commission)

50. Draft decision E/CN.4/Sub.2/1996/L.41 was adopted without a vote.

Draft decision E/CN.4/Sub.2/1996/L.42 (Methods of work of the Sub-Commission regarding item 6)

51. Mr. JOINET proposed inserting the following words at the end of the draft text: "except in exceptional circumstances"; he would join the sponsors of the draft if his amendment was accepted. It was important to make provision for machinery to address serious human rights violations committed between the end of the Commission's session and the beginning of the Sub-Commission's session.

52. Mr. LINDGREN ALVES said that he could agree to an amendment along those lines and proposed the following wording: "unless any new and very grave event occurs in the intervening period".

53. Mr. ALFONSO MARTINEZ asked the sponsors not to request a vote on the draft but simply to present it as a thought on how the Sub-Commission might, at its next session, consider agenda item 6.

54. Mr. CHERNICHENKO said he did not object to the amendment proposed by Mr. Lindgren Alves. The aim of the draft was simply to avoid redundancy between the Sub-Commission and the Commission on Human Rights.

55. Mr. BOSSUYT said that he was not opposed to the amendment proposed by Mr. Lindgren Alves, but preferred the draft's initial wording. The purpose of the text was not to solve all problems which arose during the consideration of agenda item 6, but to make it easier to deal with that item at the forty-ninth session. The point was to apply to the public procedure the same rules as those used in the confidential procedure for considering communications on violations of human rights and fundamental freedoms.

56. Ms. PALLEY said that she would also like to retain the idea of allowing the Sub-Commission to consider serious situations arising after the latest session of the Commission.

57. Mr. ALFONSO MARTINEZ said that he was prepared to agree to the draft if it was retained in its initial form, without being amended, because that would open a new discussion on criteria for defining the seriousness of a human rights violation.

58. Mr. KHALIL said that the initial text of the draft was fully in keeping with the Sub-Commission's objective of avoiding redundancy with the Commission.

59. Mr. HATANO proposed inserting the following phrase at the end of the text: "unless the Sub-Commission decides otherwise in exceptional cases of emergency".

60. Ms. GWANMESIA and Ms. MBONU expressed doubts as to the utility of the draft.

61. Ms. WARZAZI said that she understood the spirit in which Mr. Joinet had proposed his amendment. But the procedure under which the Sub-Commission adopted a resolution on a serious situation in a particular country -

submitting it to the Commission on Human Rights several months later - was not satisfactory. Thousands of human beings might have been murdered in the meantime. Consequently, the Sub-Commission must be able to adopt a resolution on an urgent situation and transmit it directly to the General Assembly.

62. Mr. EL-HAJJE, citing rule 50 of the rules of procedure, asked for the debate to be closed.

63. Mr. JOINET said that, in order to help the discussions move ahead, he would withdraw his amendment.

64. Mr. BOSSUYT said that, in serious situations, the Chairman of the Sub-Commission still had the possibility of making a statement.

65. Mr. CHERNICHENKO said that, as currently worded, the text of the draft did not rule out intercession by the Sub-Commission in cases of serious human rights violations.

66. The CHAIRMAN invited the Sub-Commission to vote on the draft decision in its initial form.

67. Draft decision E/CN.4/Sub.2/1996/L.42 was adopted by 19 votes to 3, with 2 abstentions.

68. Mr. ALFONSO MARTINEZ, speaking in explanation of vote after the vote, said that he had voted in favour of the draft decision, bearing in mind the reservations that he had expressed earlier. The Sub-Commission should review the draft decision's content at the forty-ninth session in the framework of agenda item 6.

Draft resolutions and decisions relating to agenda item 4

Draft resolution E/CN.4/Sub.2/1996/L.21 (Discrimination in the context of human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS))

69. The CHAIRMAN informed the Sub-Commission that Mr. Bengoa, Mr. Fix Zamudio and Ms. McDougall had joined the draft resolution's sponsors.

70. Ms. GWANMESIA said that the draft resolution was particularly important, because many people throughout the world were suffering from that illness. However, she had serious reservations about the enumeration of "disadvantaged persons" in the fourth preambular paragraph and operative paragraph 3. She wondered whether it was a good idea to address, on the same level, women, children, indigenous peoples, minorities, refugees and migrants, on the one hand, and sex workers, men who were homosexual, injecting drug users and prisoners, on the other. In her view, that enumeration should be deleted, especially as it might not be exhaustive: a new category of disadvantaged persons might emerge at a later date.

71. Mr. EL-HAJJE said that the draft resolution's sponsors were concerned by the spread of the illness and by the situation of disadvantaged persons, who were more vulnerable. He could, however, agree to the deletion of that

enumeration in operative paragraph 3 provided that it was retained in the fourth preambular paragraph. Like it or not, the persons referred to were really disadvantaged in that area.

72. Mr. JOINET said that all studies conducted by WHO, UN/AIDS and other bodies showed that the groups referred to in the draft were vulnerable from the point of view of AIDS. However, as a compromise solution, he suggested that Mr. El-Hajjé's proposal might be supplemented by amending the phrase in question in the fourth preambular paragraph to read: "such as, on the one hand, women, children, indigenous peoples, minorities, refugees and migrants and, on the other, men who are homosexual, as well as sex workers, injecting drug users and prisoners ...".

73. Mr. LINDGREN ALVES said that he did not object to that amendment, but found it surprising. Although he considered it normal not to conceal reality, he did not see why the disadvantaged persons concerned should be classified in three categories. That seemed discriminatory. Moreover, the Sub-Commission had already had a similar discussion at its forty-seventh session, and there would be much to gain from not repeating it at the current one. The Sub-Commission should confine itself to giving the same attention to all persons suffering from that illness.

74. Mr. GUISSÉ said that he was also in favour of deleting the enumeration in question both in the fourth preambular paragraph and in operative paragraph 3 in order to avoid giving offence to persons belonging to certain cultures.

75. Ms. McDOUGALL agreed with Mr. Lindgren Alves. The Sub-Commission must remain faithful to its principles and combat all forms of discrimination. The sole purpose of the draft resolution was to urge States to offer protection to and treatment for all those who suffered. Moreover, the fourth preambular paragraph was an exact replica of the third preambular paragraph of resolution 1995/21 on the same subject, which the Sub-Commission had adopted by consensus at its forty-seventh session. For that reason, she supported the proposal by Mr. El-Hajjé to delete the enumeration in operative paragraph 3, but suggested that it should be replaced by the following phrase: "in particular with respect to persons suffering from disadvantaged socio-economic or legal status."

76. Ms. WARZAZI said the fact that indigenous peoples, minorities, refugees and migrants appeared in the enumeration posed a serious problem. Some people, notably on the extreme right, would hasten to conclude that the Sub-Commission had confirmed their assertion that migrant workers were likely to spread AIDS. Furthermore, according to the fourth preambular paragraph, the groups cited in the enumeration were disadvantaged because they lacked the full enjoyment of their fundamental rights, whereas in her opinion, the rights of homosexuals were in general particularly well defended and respected.

77. Ms. MBONU asked where the statistics had been taken from which had been used by the draft resolution's sponsors to identify the groups which appeared in the enumeration in question. The draft resolution gave the impression that victims of AIDS only came from among the poorest; yet AIDS and poverty were unrelated.

78. Ms. GWANMESIA said she also had reservations about the sixth preambular paragraph, which seemed to suggest that all women were likely to become ill with AIDS.

79. Ms. DAES said that the disputed listing in the fourth paragraph and operative paragraph 3 should be deleted, but in the latter case it should be replaced by the phrase proposed by Ms. McDougall.

80. Mr. JOINET pointed out that nothing in the draft resolution supported an inference that only the poorest were likely to be infected with AIDS. The Sub-Commission should not embark upon an ethical or ideological discussion on the question. It was a fact that certain groups were more vulnerable than others, and that constituted an injustice. The draft resolution's sponsors had been in contact with many delegations, including observers from countries concerned by that problem. Consequently, he proposed retaining the enumeration in question, amended as he had suggested, in the fourth preambular paragraph, subject to the deletion of the phrase "to the lack of full enjoyment of their fundamental rights and" and taking into account Ms. Warzazi's observations; in operative paragraph 3, on the other hand, it should be deleted and replaced by the phrase proposed by Ms. McDougall. In his view, that was a balanced solution, because it was essential to avoid giving the impression that the draft constituted a retreat from the resolution which the Sub-Commission had adopted on the subject at its previous session.

The meeting rose at 1.05 p.m.